IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 5837 of 2007(R)

PETITIONER:

V.P.PRAVADA, COURT OFFICER (HIGHER GRADE) (RETD.), HIGH COURT OF KERALA, ERNAKULAM, RESIDING AT KADAVIL HOUSE, MUTTATHIL LANE, KADAVANTHARA P.O., COCHIN-20.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENT:

HIGH COURT OF KERALA, COCHIN-31, REPRESENTED BY ITS REGISTRAR (GENERAL).

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH
SRI.K.V.JOY
SRI.K.RAMACHANDRAN (THYKOODAM)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 5837 OF 2007 R

Dated this the 3rd April, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner joined Government service on 9.1.1978 and later in the High Court service on 9.2.1987. Prayer in the Writ Petition is to direct the first respondent to consider Ext.P2 in the light of extension of service granted to certain named persons who are members of the Kerala High Court Service. A declaration is also sought that the petitioner is entitled for extension of service on similar lines with extension granted to certain named persons.

2. It is the case of petitioner that the Chief Justice was pleased to propose the enhancement of retirement age of members of the High Court Service from 55 to 58. Claiming permission to continue in service till 58 years, Writ Petitions were filed before this Court, which came to be disposed of Ext.P1 Judgment. Fiftyfive years is the age at which retirement

is to take effect under Rule 60 Part I of KSR. There is reference made to Rule 35 of the Rules. According to her, certain persons named who are employees of the High Court were granted extension of service for different periods. As per the Kerala High Court Service Rules, 2006 which has come into operation only in 2007, the age of retirement is 58 years for the members of the Kerala High Court service also. According to her, in such circumstances, grant of extension of service as sought for by her in Ext.P2 which she submitted on 21.11.2006, would entail for her full pension besides allowing her to continue upto 58 years.

3. Heard the learned counsel for the petitioner and Shri O. V. Radhakrishnan, learned senior counsel appearing on behalf of the High Court. Counsel for petitioner referred to the decisions in M.V. K. Nambiar v. State of Kerala (1992 (1) KLT 24), Sajan Mannali v. Hon'ble Chief Justice (1994 (1) KLT 223) and State of Kerala v. Sundaram Iyer (1983 KLT 1105).In State of Kerala v. Sundaram Iyer (1983 KLT 1105), a Division Bench of this Court proceeded to consider how far the Court can

enquire into reasons for an order of extension of service under Rule 60. The Court proceeded to hold as follows:

> *"The extent of scrutiny in such cases should be limited to a reasonable appraisal of the facts and circumstances of the case and the court should not undertake a search for reasons to fault the order. If with reference to the files and other materials the court could be satisfied that the order was passed in public interest, the court should normally stay its hands and not try to probe into it incisively to discover invalidating circumstances."*

In M.V.K. Nambiar v. State of Kerala (1992 (1) KLT 24), this Court held as follows:

> *"The Chief Justice is the only authority who can issue an order retaining an employee of the High Court after he attained the age of 55 years as provided under Rule 60(a) of Part I KSR in the light of the power given under Art. 229 of the Constitution read with Rule 35 of the High Court Service Rules, 1970. An order passed under Rule 60(a) retaining an employee beyond the age of 55*

years may make him eligible to salary, allowances, leave, pension etc., in respect of the period in which he was thus allowed to work after attaining the age of 55 years. The salary, allowances, leave etc. of an employee of the High Court will be affected if he is suspended, dismissed, removed or compulsorily retired from service. But still, it is only the Chief Justice who has got the power to suspend, dismiss, remove or compulsorily retire an employee of the High Court. No concurrence is necessary from the Government respondent in enforcing the above order issued by the Chief Justice."

In Sajan Mannali v. Hon'ble Chief Justice (1994 (1) KLT 223) another Division Bench of this Court held as follows:

"The question whether extension of service should be made or re-employment should be resorted to is essentially a matter for the authority concerned namely the Chief Justice in this case. The question is one of power, and Note 3 does not rule out an extension of service."

4. Learned senior counsel appearing on behalf of the respondent, High Court, would submit that the petitioner has no legal right to insist that she be given extension. I am of the view that in so far as the petitioner is unable to establish in herself a legal right to seek continuance in service and the fact that she has already retired, should weigh with me in arriving at the conclusion that the Writ Petition is to be dismissed. It is essentially a matter for the Chief Justice to decide. The fact that no orders were passed granting extension to her apparently shows that the Chief Justice was not convinced of the need to grant extension of service in her case. It is also pointed out that in some other cases, such requests have been turned down by the Chief Justice. In the totality of facts, the Writ Petition fails and it is dismissed.

K. M. JOSEPH, JUDGE

kbk.